

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF  
PHARMACY AND COUNTRY MART**

Country Mart Pharmacy, license number 2006035969 ("Licensee"), and the State Board of Pharmacy, ("Board"), enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence on mitigation of discipline; and the right to request the recovery of attorney's fees incurred in defending this action against its license. Being aware of these rights provided to Licensee by operation of law, Licensee knowingly and voluntarily waives

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<sup>1</sup> All statutory references are to the 2000 Revised Statutes of Missouri, as amended, unless other wise stated.

each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to it.

Licensee acknowledges that it has received a copy of the investigation report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. For purpose of settling, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's pharmacy license, license no. 2006035969, is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 338, RSMo.

#### **Joint Stipulation of Facts**

1. The Board is an agency of the State of Missouri created pursuant to § 338.140, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.
2. Town & Country Grocers of Fredericktown, MO, Inc., d/b/a Country Mart holds a license from the Board as a pharmacy, license no.2006035969 ("license"). Country Mart's license was current and active at all times relevant herein, and is presently still active.
3. Country Mart is located at 301 T.J. Stewart Dr, Park Hills, Missouri.
4. At all times relevant herein, Licensee had a relationship of professional trust and/or confidence with its customers and the general public.
5. At all times relevant herein, Licensee had a professional duty to maintain adequate security to deter theft of drugs by its personnel and the public.

6. At all times relevant herein, Licensee had a professional duty to maintain adequate records to guarantee security, storage, and accountability for drugs that come into or leave its possession.

7. Between June 2008, and February 2009, Cheri Culver ("Welch") was employed as a pharmacy technician at Country Mart.

8. During her last six months of employment, Culver diverted approximately 6000 Hydrocodone/APAP tablets from the pharmacy.

9. During this period the pharmacy did not sufficiently monitor Hydrocodone/APAP purchases from its supplier.

10. Hydrocodone/APAP is a schedule III controlled substance pursuant to § 195.017.6(4)(d), RSMo, and 21 CFR § 1308.13(e)(1)(iv).

#### **Joint Conclusions of Law**

1. Section 338.055.2, RSMo, provides in pertinent part:

The board may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate or registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provisions of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

\* \* \*

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government [.]

2. 19 CSR 30-1.031 provides in pertinent part:

(1) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032-19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

(2) Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operations. If a controlled substance is transferred to a different schedule, or a noncontrolled substance is listed on any schedule, or the quantity of controlled substances in the possession of the registrant in normal business operations significantly increases, physical security controls shall be expanded and extended accordingly.

3. 20 CSR 2220-2.010 provides in pertinent part:

\* \* \*

(1)(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm

systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

\* \* \*

(1)(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

\* \* \*

4. 21 CFR § 1301.71(a) provides:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Administrator shall use the security requirements set forth in Secs. 1301.72-1301.76 as standards for the physical security controls and operating procedures necessary to prevent diversion.

5. Based on the occurrences described above, Licensee violated 19 CSR 30-1.031(1-2); 20 CSR 2220-2.010(1)(H), (1)(O), and 21 CFR § 1301.71(a); providing cause to discipline its license pursuant to §338.055.2(5-6), (13), and (15), RSMo.

#### **Jointly Agreed Disciplinary Order**

1. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary agreement entered by the Board in this matter under the authority of Section 621.045.3, RSMo. Licensee's license as a pharmacy, license no. 2006035969, is hereby **CENSURED**.

2. The parties to this Order understand that the Board of Pharmacy will maintain this agreement as an open record of the Board as provided in Chapters 338, 610, and 324, RSMo.

3. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

5. Licensee understands that it may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license as a pharmacy. If Licensee desires the

Administrative hearing Commission to review this agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

6. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect fifteen (15) days after the document is signed by the Executive Director of the Board.

**LICENSEE**

Bob Hufford  
By: Bob Hufford, President  
TOWN AND COUNTRY GROCERS  
OF FREDRICKTOWN, MO, INC.  
D/B/A COUNTRY MART  
Date: 4-7-2010

**MISSOURI BOARD OF PHARMACY**

Kimberly Grinston  
Executive Director  
Missouri Board of Pharmacy  
Date: 6-7-10

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**ATTORNEYS FOR MISSOURI  
BOARD OF PHARMACY**